

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

GLENN JEFFREY LALE,

Petitioner,

ORDER

v.

09-cv-0124-bbc

MICHAEL DITTMAN, Warden,
Kettle Moraine Correctional Institution,

Respondent.

Glenn Jeffrey Lale has filed a notice of appeal from this court's order and judgment denying his application for a writ of habeas corpus. Under Fed. R. App. P. 22(b)(1), this court must either issue petitioner a certificate of appealability under 28 U.S.C. § 2253(c) or state why a certificate should not issue. A certificate of appealability shall issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). In order to make this showing, a petitioner must "sho[w] that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quoting Barefoot v. Estelle, 463 U.S. 880, 893, n.4 (1983)).

Petitioner has not made this showing. As I explained in the order denying the habeas application, petitioner had "not even come close" to showing that his lawyer rendered

ineffective performance at petitioner's sentencing hearing for his seventh drunk driving offense and he proposed no facts to undermine either the validity of his plea or sentence. Op. and Order, Sept. 21, 2009, dkt. #12, at 6-8. In a word, this petition was meritless. It follows that reasonable jurists would not debate whether it should have been resolved in a different manner.

Petitioner has not paid the appellate filing fee nor an affidavit of indigency. Nonetheless, I will assume that petitioner is seeking leave to proceed in forma pauperis on appeal. When reviewing a state habeas petitioner's request for leave to proceed in forma pauperis on appeal, this court must determine whether petitioner is taking his appeal in good faith, that is, whether a reasonable person could suppose the appeal has some merit. Walker v. O'Brien, 216 F.3d 626, 631-32 (7th Cir. 2000). As should be plain from the foregoing, I cannot certify that petitioner is taking his appeal in good faith. Accordingly, his implied request for leave to proceed in forma pauperis on appeal will be denied.

ORDER

IT IS ORDERED that:

1. Petitioner Glenn Jeffrey Lale's request for a certificate of appealability is DENIED. Pursuant to Fed. R. App. P. 22(b), if a district judge denies an application for a certificate of appealability, the petitioner may request a circuit judge to issue the certificate.

2. Petitioner's request for leave to proceed in forma pauperis on appeal is DENIED because I am certifying that his appeal is not taken in good faith.

Entered this 13th day of October, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge